

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Hoffman Communications, Incorporated)	File No. EB-02-NF-113
Licensee of Station WGGM(AM))	
Owner of Antenna Structure Numbers 1040995,)	NAL/Acct. No. 200232640008
1040996, and 1040997)	
Alexandria, Virginia)	FRN 5011671

FORFEITURE ORDER

Adopted: December 19, 2003

Released: December 23, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture in the amount of nineteen thousand six hundred dollars (\$19,600) to Hoffman Communications, Incorporated (“HCI”), owner of antenna structure numbers 1040995, 1040996, and 1040997 in Chester, Virginia, and licensee of radio station WGGM(AM), for willful and repeated violations of Sections 73.49, 17.21, and 73.1745(a) of the Commission’s Rules (“Rules”).¹ Specifically, we find HCI liable for failing to maintain effective fencing around its antenna structures, for failing to install prescribed lighting, and for exceeding authorized nighttime power limits.

2. On September 30, 2002, the Commission’s Norfolk, Virginia Resident Agent Office (“Norfolk Office”) released a *Notice of Apparent Liability for Forfeiture* (“NAL”) to HCI for a forfeiture in the amount of twenty-one thousand dollars (\$21,000).² HCI filed a response to the NAL on October 30, 2002.

II. BACKGROUND

3. On August 19 and 20, 2002, a Commission agent from the Norfolk Office observed Station WGGM(AM)’s operations and facilities in Chester, Virginia. On both days, while WGGM(AM) was broadcasting with three towers energized, the fencing around the base of each antenna structure was ineffective. Entire sections of fencing around two of the towers were down while fence pickets around the third were missing or separated. With the exception of thick brush around one tower, the condition of all three fences allowed unobstructed access to the base of the energized towers. Also on August 19 and 20, 2002, the same agent inspected HCI’s antenna structure numbers 1040995 (93.9 meters), 1040996 (93.7 meters), and 1040997 (117.7 meters). While conducting the inspection, the agent observed that

¹ 47 C.F.R. §§ 73.49, 17.21, and 73.1745(a) .

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232640008 (Enf. Bur., Norfolk Office, released September 30, 2002).

only the tallest antenna structure had lighting installed, while the remaining two did not. Finally, on August 19 and 20, 2002, after sunset, the agent took field strength measurements at the monitoring points specified in the WGGM(AM) license. On both nights, at two of the three nighttime monitoring point locations, WGGM(AM) exceeded field strength limits by more than 150% of the values specified in its license.

4. On September 30, 2002, the Norfolk Office issued a *NAL* for \$21,000 to HCI for violating Sections 73.49 (\$7,000), 17.21 (\$10,000), and 73.1745(a) (\$4,000) of the Rules. HCI filed a response on October 30, 2002 in which it requests cancellation or reduction of the proposed forfeiture amount.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining HCI’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

6. Section 73.49 of the Rules requires antenna structure owners to provide effective locked fences or other enclosures around antenna structures with radio frequency potential at their bases. On August 19 and 20, 2002, the investigating agent found HCI’s antenna structures (numbers 1040995, 1040996, and 1040997) to be without effective locked fencing because there were sections of gaps in two of the fences and pickets missing from the fence surrounding the third antenna structure. HCI does not challenge this finding. However, HCI submits that because it discovered the disrepair of the fencing on August 12, 2002, and contracted to have it repaired on August 15, 2002, four days before the inspection, its own discovery and prompt action should be considered in mitigation.⁶ We agree with HCI that its efforts to get the fencing repaired prior to the inspection constitute good faith on its part and, therefore, we will reduce the total forfeiture for the fencing violation to \$5,600.⁷

7. Section 17.21(a) of the Rules requires tower owners to paint and light their antenna structures when they exceed 60.96 meters (200 feet) in height above ground. On August 19 and 20, 2002, HCI’s antenna structures (numbers 1040995 and 1040996), which are both taller than 60.96 meters, had no lights installed. The Commission’s ASR database indicates that both towers should be lighted. Thus,

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ The fences were repaired on August 22, 2002.

⁷ See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003).

the Norfolk Office determined that HCI was in violation of Section 17.21(a) of the Rules. HCI disagrees with the *NAL*'s finding that the antenna structures require lighting. HCI asserts that when it constructed the three tower array in 1988 it understood from its consultants that only antenna structure number 1040997 required lighting. HCI believed that antenna structure numbers 1040995 and 1040996 did not require lighting because they were shielded by antenna structure number 1040997. HCI also argues that several contractors, consulting engineers and even FCC inspectors have visited the WGGM(AM) tower site over the years and no one has ever informed them that antenna structure numbers 1040995 and 1040996 required lighting. Finally, HCI states that, following the inspection, it conducted its own investigation and found a number of errors in the official filings for the three towers. On October 25, 2002, HCI filed with the Federal Aviation Administration ("FAA") three Notices of Proposed Construction or Alteration: one to correct the height of antenna structure number 1040997; one to remove the lighting requirements from antenna structure number 1040995; and one to remove the lighting requirements from antenna structure number 1040996. Because HCI believed that the FAA would remove the lighting requirements from both antenna structures, HCI requested that the Commission cancel the portion of the forfeiture relating to the lighting violations or suspend the forfeiture until the FAA acted on HCI's applications.

8. Notwithstanding the information that may have been provided to HCI by its consultants, the antenna structure registrations for antenna structure numbers 1040995, 1040996, and 1040997, which were issued by the Commission to HCI on March 17, 1998, required all three structures to be lighted. Although the FAA has since removed the lighting requirements from antenna structure number 1040996, at the time of the inspection, all three antenna structures were required to be lighted. Antenna structure numbers 1040995 and 1040996 were not. The FAA's subsequent No Hazard determination was not in effect until after the issuance of the *NAL*. Thus, these unlighted towers violated Section 17.21(a) of the Rules and we therefore find that Hoffman willfully and repeatedly violated Section 17.21(a).⁸ Moreover, the FAA has confirmed the violation by reaffirming that antenna structure number 1040995 is required to be lighted.

9. Section 73.1745(a) of the Rules prohibits broadcast stations from operating at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided by part 73 of the Rules. After sunset on August 19 and 20, 2002, WGGM(AM) exceeded field strength limits of permissible operating power at two nighttime monitoring points by over 150% in violation of Section 73.1745(a) of the Rules. HCI does not dispute the violation. However, HCI states that it ceased nighttime operations on August 21, 2002, investigated the matter, and resumed nighttime operations within authorized parameters on September 4, 2002. Consequently, HCI seeks mitigation of the forfeiture because of its prompt corrective action. Remedial actions taken to correct the violation, while commendable, are not mitigating factors.⁹

⁸ See, *FBS Wireless Corporation*, 18 FCC Rcd 21018 (Enf. Bur. 2003).

⁹ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

10. There is no evidence that HCI is in compliance with Section 17.21 of the Rules with respect to the lighting of antenna structure number 1040995. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹⁰ that HCI report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* how it has achieved compliance with Section 17.21 of the Rules for antenna structure number 1040995. HCI's report must be submitted in the form of an affidavit signed by an officer or director of HCI.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ HCI **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nineteen thousand six hundred dollars (\$19,600) for failure to maintain effective fencing around its antenna structures, failure to install prescribed lighting, and for exceeding authorized nighttime power limits, in willful and repeated violation of Sections 73.49, 17.21, and 73.1745(a) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, HCI must submit the report described in Paragraph 10, above, within no more than thirty (30) days following the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A728, Washington, D.C. 20554, Attention: Jacqueline Ellington, Esq.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232640008 and FRN 5011671. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

¹⁰ 47 U.S.C. § 308(b).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Hoffman Communications, Inc., 2461 Eisenhower Avenue, Alexandria, Virginia 22331 and its counsel, Kevin Latek, Esq., Dow, Lohnes, and Albertson, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau